

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RACHELLE DUVALL, as Personal	:	No. 4:CV 05-1786
Representative of the ESTATE OF	:	
MARK DUVALL, deceased; and	:	
RACHELLE DUVALL, as Personal	:	Judge Jones
Representative of the ESTATE OF	:	
TAMMY DUVALL, deceased,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
AVCO CORPORATION, et al.,	:	
	:	
Defendants	:	

MEMORANDUM AND ORDER

January 31, 2006

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Pending before the Court is a Motion for to Dismiss or, in the Alternative, to Transfer this Action to the United States District Court for the District of Alaska, Anchorage Division(“the Motion”)(doc.44) filed by Defendant Crane Co. (“Crane” or “Defendant”) on November 28, 2005

Diversity jurisdiction is proper pursuant to 28 U.S.C. §1332.

For the following reasons, the Motion is denied.

STATEMENT OF FACTS AND PROCEDURAL HISTORY:

This products liability, negligence and wrongful death action arises out of an aircraft accident near Chickaloon, Alaska, on September 2, 2003, which killed the pilot, Glyn. A. Bindon and his two passengers, Mark K. DuVall and Tammy S. DuVall. Rachell DuVall (“DuVall” or “Plaintiff”), the personal representative of the passengers’ estates, commenced this action by filing a complaint (doc. 1) with this Court on September 1, 2005. The named Defendants in this action include Cessna, the manufacturer of the aircraft, AVCO, whose Lycoming Engines Division is the manufacturer of the engine, Precision, the manufacturer of the fuel servo, and Crane Co. d/b/a Lear Romec, the manufacturer of the fuel pump. The Plaintiff claims that the accident was caused by the malfunction of the aircraft’s engine and fuel servo.

Slightly before 8 a.m. on September 2, 2003, Mark and Tammy DuVall joined Glyn Bindon on a flight departing from Homer, Alaska, aboard Mr. Bindon’s Cessna T206 aircraft. The National Weather Service weather observer in the area reported limited visibility in the area and that Sheep Mountain Pass, a route Mr. Bindon intended to utilize, was closed. However, Mr. Bindon did not have this information during flight because he did not request any weather updates. At approximately 10 a.m., the aircraft piloted by Mr. Bindon crashed into the side of a mountain. Mr. Bindon and both of the DuValls were killed in the accident.

The instant Motion (doc. 44) were filed on November 28, 2005. To date the Motion has been fully briefed and are therefore ripe for review.

STANDARD OF REVIEW:

In considering a motion to dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6), a court must accept the veracity of a plaintiff's allegations. See Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); see also White v. Napoleon, 897 F.2d 103, 106 (3d Cir. 1990). In Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996), our Court of Appeals for the Third Circuit added that in considering a motion to dismiss based on a failure to state a claim argument, a court should "not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to offer evidence to support their claims." Furthermore, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also District Council 47 v. Bradley, 795 F.2d 310 (3d Cir. 1986).

DISCUSSION:

The Defendant moves this Court to dismiss Count XI of the complaint. (Rec. Doc. 1). Count XI is a breach of warranties claim asserted against the Defendant and Defendant Lear Romec Corp.

The Defendants argue that Count XI must be dismissed because Alaska law governs this lawsuit and under Alaska law, a seller's warranty extends only to buyers and natural persons in the family or household of the buyer. While that point of Alaska law is accurate, what the Defendant omits to recognize is that a choice of law decision has not been rendered by this Court at this point in the lawsuit, therefore the Defendant's blanket assertion that “[t]his case is governed by Alaska law,” is of no moment in the disposition of this Motion.

Our reading of Count XI reveals that the Plaintiff pointedly alleges that “Defendant . . . warranted both expressly and impliedly that its fuel pump installed on the subject engine was reasonably fit for its intended and foreseeable use and purpose . . .” Further, the complaint alleges that the Defendant breached its warranties by manufacturing and selling the defective fuel pump and as a proximate cause of the breach of the warranties, Plaintiff’s decedents were killed in the aircraft crash. We find that the Plaintiff’s allegations are sufficient to survive the Rule 12(b) standard.

Further, Defendant argues that this case should be dismissed under the doctrine of *forum non conveniens*. In determining whether a case should be dismissed on *forum non conveniens* grounds, courts apply four factors announced by the Supreme Court in Gulf Oil Corp. v. Gilbert, 330 U.S. 501: (1) whether an

alternative forum is open to the Plaintiff if the case is dismissed; (2) the Plaintiff's choice of forum; (3) the private interests of the litigants; and (4) the public interests of the fora.

This Court has already undertaken a searching review of the factors initially enumerated in Gulf Oil and further elaborated on in Jumara v. State Farm Ins. Co., 55 F. 3d 873, 879 (3d Cir. 1995) in our Order dated January 30, 2006 (doc. 80) denying the Joint Motion to Transfer (doc. 26) filed by Defendants, AVCO Corporation, on behalf of its Lycoming Engines Division, Textron Inc., Cessna Aircraft Company, and Precision Automotive LLC. We will incorporate herein our analysis as set forth in the said January 30, 2006 Memorandum and Order, and in so doing reiterate simply that the balance of the factors does not favor dismissing Count XI under the doctrine of *forum non conveniens*, nor does it warrant a transfer to the United States District Court for the District of Alaska.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion (doc. 44) is DENIED.

s/ John E. Jones III
John E. Jones III
United States District Judge